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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,924	05/24/2001	Lisa Lofaro	506-001	1686

7590

12/17/2003

Ward & Olivo
708 Third Ave
New York, NY 10017

EXAMINER

ELKINS, GARY E

ART UNIT PAPER NUMBER

3727

DATE MAILED: 12/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/864,924

Applicant(s)

LOFARO, LISA

Examiner

Gary E. Elkins

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspond nc address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 and 40-43 is/are rejected.
- 7) ☒ Claim(s) 39 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 May 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, figs. 4-6 in Paper No. 7 is acknowledged. The election is considered applicable to any future amendment of the claims.

Claim Objections

2. Claim 39 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 39 is dependent upon itself.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the handle as set forth in claim 31 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

4. The abstract of the disclosure is objected to because the legal phraseology "means" was used in line 5. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

5. Claims 1-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The following each lack antecedent basis in the claims, i.e. each is only inferentially set forth: claim 1, line 10, "said each of said sides" and claim 8, "said connectors" (only one previously positively claimed).

The following are each grammatically unclear: claim 8, "at least one of edge of at least one of said sides" and claim 13, line 15, "is positioned the top".

In claim 19, "means for securing a strap" appears to be a double inclusion of an element since claim 13 already defines a means for securing the device in a stationary position. If the two "means" are claiming different elements, the function(s) of the "means" should be clarified to prevent confusion and ambiguity.

In claim 25, lines 5 and 6, "thereof" (two occurrences) is unclear with respect to the previous element(s) referred to.

In claim 35, "a strap" appears to be a double inclusion of an element since the "means for securing said device" was previously set forth. If the strap and the "means" are different elements, then the "means for securing said device" is unclear and ambiguous.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 35, 42 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Dolle et

al. Dolle et al discloses a device 10 including a base and sides, openings (14 and the cup holders in the front of the device), a front flange forming a means for securing the device, and a strap securing the device.

8. Claims 35, 37, 38, 42 and 43 rejected under 35 U.S.C. 102(b) as being anticipated by Kolander. Kolander discloses a device including a base and sides, openings in the top of the container, means 42 (formed by a notch or slit in the side of the box) securing the device in an erect configuration, and a strap 32 or 36 securing the device to a vehicle.

9. Claims 1, 4, 5, 10, 11, 35, 37, 42 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Reed. Reed discloses a device including a base and sides, openings (30, 30, 32 as shown in fig. 3), and notches in the sides of the container to receive the strap 40 to secure the device.

10. Claims 1, 6, 7, 35, 37, and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Whorton. With respect to claims 1, 6 and 7, Whorton discloses a device including a base and sides, an opening in the top of the device, and means 24 for securing the device in a vehicle formed as part of the side 12. With respect to claims 35, 37 and 38, Whorton discloses a device including a base and sides, an opening in the top of the device, a means or notch 21 for securing the device in an erect position, and a strap 24 securing the device in a stationary position as claimed.

Art Unit: 3727

11. Claims 1, 4, 5, 7, 10, 11, 35, 37, 42, and 43 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kavanagh et al.

Allowable Subject Matter

12. Claims 2, 3, 8, 9, 12, 36, 40 and 41 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

13. Claims 13-34 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Conclusion

The remaining cited prior art is illustrative of the general state of the art.

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

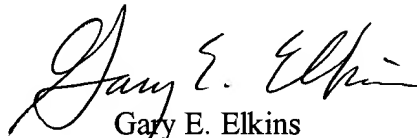
If in receiving this Office Action, it is apparent that certain documents are missing, e.g. copies of references cited, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703)306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist at (703)308-1078.

Art Unit: 3727

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (703)308-1034. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Lee Young can be reached at (703)308-2572.



Gary E. Elkins
Primary Examiner
Art Unit 3727

gee
15 December 2003